

## **CHAPTER 5.82**

### **SEXUALLY-ORIENTED BUSINESSES AND EMPLOYEE LICENSING**

#### **Sections:**

- 5.82.010 Title for citation.**
- 5.82.020 Purpose.**
- 5.82.030 Definitions.**
- 5.82.040 License required.**
- 5.82.050 Location and zoning restrictions.**
- 5.82.060 Additional restrictions.**
- 5.82.070 Premises location and name.**
- 5.82.080 Issuance of license.**
- 5.82.085 License display.**
- 5.82.090 Fees.**
- 5.82.100 Inspection.**
- 5.82.110 Expiration of license.**
- 5.82.120 Suspension.**
- 5.82.130 Revocation.**
- 5.82.140 Hearing--Denial, revocation, and suspension; Appeal.**
- 5.82.150 Transfer of license.**
- 5.82.160 Hours of operation.**
- 5.82.170 Regulations pertaining to exhibition of sexually explicit films or videos.**
- 5.82.180 Loitering and exterior lighting and monitoring requirements.**
- 5.82.190 Penalties and enforcement.**
- 5.82.200 Application to existing businesses.**
- 5.82.210 Additional regulations concerning live public nudity.**
- 5.82.220 Regulations and unlawful activities.**
- 5.82.230 Outcall services; Operational requirements.**
- 5.82.240 Legitimate artistic modeling.**
- 5.82.250 Severability.**

#### **5.82.010 Title for citation.**

This chapter may be referred to as the "Cottonwood Heights Sexually-Oriented Business and Employee Licensing Ordinance."

#### **5.82.020 Purpose.**

It is the purpose of this ordinance to regulate sexually oriented businesses in order to promote the health, safety, morals, and general welfare of the citizens of the city, and to establish reasonable and uniform regulations to prevent the deleterious secondary effects of sexually oriented businesses within the city. The provisions of this ordinance have neither the purpose nor effect of imposing a limitation or restriction on the content or reasonable access to any communicative materials, including sexually oriented materials. Similarly, it is not the intent nor effect of this ordinance to restrict or deny access by adults to sexually oriented materials protected by the First Amendment, or to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market. Neither is it the intent nor effect of this ordinance to condone or legitimize the distribution of obscene material.

#### **5.82.030 Definitions.**

For purposes of this chapter, certain words and terms are defined in this section. Words used in the present tense include the future; words used in the singular include the plural and the plural the singular. The words and phrases defined in this section shall have the meanings ascribed to them unless a different meaning is clearly indicated by the context.

A. "Adult arcade" means any place to which the public is permitted or invited wherein coin-operated or slug-operated or electronically, electrically, or mechanically controlled still or motion picture machines, projectors, or other image-producing devices are regularly maintained to show images to five or fewer persons per machine at any one time, and where the images so displayed are distinguished or characterized by their emphasis upon matter exhibiting or describing "specified sexual activities" or "specified anatomical areas."

B. "Adult bookstore, adult novelty store, or adult video store" means a commercial establishment which has significant or substantial portion of its stock-in trade or derives a significant or substantial portion of its revenues or devotes a significant or substantial portion of its interior business or advertising, or maintains a substantial section of its sales or display space to the sale or rental, for any form of consideration, of any one or more of the following:

1. Books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes, compact discs, slides, or other visual representations which are characterized by their emphasis upon the exhibition or description of "specified sexual activities" or "specified anatomical areas";

2. Instruments, devices, or paraphernalia which are designed for use or marketed primarily for stimulation of human genital organs or for sadomasochistic use or abuse of themselves or others.

C. "Adult cabaret" means a commercial establishment or juice bar, or similar establishment, whether or not alcoholic beverages are served, which regularly features: (1) persons who appear semi-nude, (2) live performances which are characterized by the exposure of "specified anatomical areas" or "specified sexual activities," or (3) films, motion pictures, videocassettes, slides, or other photographic reproductions which are characterized by their emphasis upon the exhibition or description of "specified sexual activities" or "specified anatomical areas."

D. "Adult motel" means a motel, hotel, or similar commercial establishment which: (1) offers public accommodations, for any form of consideration, and which regularly provides patrons with closed-circuit television transmissions, films, motion pictures, video cassettes, slides, or other photographic reproductions which are characterized by their emphasis upon the exhibition or description of "specified sexual activities" or "specified anatomical areas" and which advertises the availability of such material by means of a sign visible from the public right-of-way, or by means of any off-premises advertising, including but not limited to, newspapers, magazines, pamphlets or leaflets, radio or television, and (2) offers a sleeping room for rent for a period of time less than ten (10) hours.

E. "Adult motion picture theater" means a commercial establishment where films, motion pictures, videocassettes, slides, or similar photographic reproductions which are characterized by their emphasis upon the exhibition or description of "specified sexual activities" or "specified anatomical areas" are regularly shown for any form of consideration.

F. "Adult theater" means a theater, concert hall, auditorium, or similar commercial establishment which, for any form of consideration, regularly features persons who appear in state of semi-nudity or live performances which are characterized by their

emphasis upon the exposure of “specified anatomical areas” or “specified sexual activities.”

G. “Business license official” or “license official” means the manager of his designee.

H. “Controlling interest” means the power, directly or indirectly, to direct the operation, management or policies of a business or entity, or to vote twenty percent (20%) or more of any class of voting securities of a business. The ownership, control, or power to vote twenty per cent or more of any class of voting securities of a business shall be presumed, subject to rebuttal, to be the power to direct the management, operation or policies of the business.

I. “Distinguished or characterized by an emphasis upon” means the dominant or principal theme of the object described by such phrase. For instance, when the phrase refers to films which are distinguished or characterized by an emphasis upon the exhibition or description of “specified sexual activities or specified anatomical areas,” the films so described are those whose dominant or principal character and theme are the exhibition or description of “specified anatomical areas” or “specified sexual activities.”

J. “Escort” means a person who, for consideration, agrees or offers to act as a companion, guide, or date for another person, or who agrees or offers to privately model lingerie or to privately perform a striptease for another person.

K. “Escort agency” means a person or business association who furnishes, offers to furnish, or advertises to furnish escorts as one of its primary business purposes for a fee, tip, or other consideration.

L. “Escort service runner” means any third person, not an escort, who, for pecuniary compensation, acts in the capacity of an agent or broker for an escort service, escort or patron by contacting or meeting with escort

services, escorts or patrons at any location within the city, whether or not such third person is employed by such escort service, escort, patron, or by another business, or is an independent contractor or self-employed.

M. “Employ, employee, and employment” describe and pertain to any person who performs any service on the premises of a sexually oriented business, on a full time, part time, or contract basis, whether or not the person is denominated an employee, independent contractor, agent, or otherwise. Employee does not include a person exclusively on the premises for repair or maintenance of the premises or for the delivery of goods to the premises.

N. “Establish or establishment” shall mean and include any of the following:

1. The opening or commencement of any sexually oriented business as a new business;
2. The conversion of an existing business, whether or not a sexually oriented business, to any sexually oriented business;
3. The addition of any sexually oriented business to any other existing sexually oriented business; or
4. The relocation of any sexually oriented business.

O. “Hearing officer” shall mean the manager of the city of Cottonwood Heights or his designee.

P. “Licensee” means a person in whose name a license to operate a sexually oriented business has been issued, as well as the individual or individuals listed as an applicant on the application or renewal application for a sexually oriented business license. In case of an “employee,” it shall mean the person in whose name the sexually oriented business employee license has been issued.

Q. “Nudity” or “state of nudity” means the live showing of the human male or female genitals, pubic area, vulva, anus, anal cleft or cleavage with less than a fully opaque covering, or the showing of the female breast

with less than a fully opaque covering of any part of the nipple or areola.

R. "Operate or cause to operate" means to cause to function or to put or keep in a state of doing business.

S. "Operator" means any persons on the premises of a sexually oriented business who is authorized to exercise overall operational control of the sexually oriented business or who causes to function or who puts or keeps in operation the sexually oriented business. A person may be found to be operating or causing to be operated a sexually oriented business whether or not that person is an owner, part owner, or licensee of the sexually oriented business.

T. "Outcall services" means services of a type performed by a sexually oriented business employee outside of the premises of the licensed sexually oriented business, including, but not limited to, escorts, models, dancers and other similar employees.

U. "Person" means any individual, proprietorship, partnership, corporation, limited liability company, limited liability partnership, association, or other legal entity.

V. "Regularly features or regularly shown" means a consistent or substantial course of conduct, such that the films or performances exhibited constitute a substantial portion of the films or performances offered as a part of the ongoing business of the sexually oriented business.

W. "Semi-nude or state of semi-nudity" means a state of dress in which opaque clothing covers no more than the genitals, anus, anal cleft or cleavage, pubic area, vulva, and the nipple and areola of the female breast. This definition shall not include any portion of the cleavage of the human female breast exhibited by a dress, blouse, skirt, leotard, bathing suit, or other wearing apparel provided that the areola is not exposed in whole or in part.

X. "Semi-nude model studio" means any place where a person, who regularly appears

in a state of semi-nudity, is observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by other persons for money or any form of consideration. It is a defense to prosecution for any violation of this chapter that a person appearing in a state of nudity or semi-nudity did so in a modeling class operated:

1. By a college, junior college, or university supported entirely or partly by taxation;

2. By a private college or university which maintains and operates educational programs in which credits are transferable to college, junior college, or university supported entirely or partly by taxation; or:

3. In a structure:

- (a) Which has no sign visible from the exterior of the structure and no other advertising that indicates a semi-nude person is available for viewing; and

- (b) Where, in order to participate in a class a student must enroll at least three days in advance of the class.

Y. "Sexual encounter establishment" means a business or commercial establishment, that as one of its principle business purposes, offers for any form of consideration, a place where two or more persons may congregate, associate, or consort for the purpose of "specified sexual activities" or when one or more of the persons is semi-nude.

Z. "Sexually oriented business" means an adult arcade, adult bookstore, adult novelty store, adult video store, adult cabaret, adult motel, escort service, outcall service or agency, adult motion picture theater, adult theater, semi-nude model studio, or sexual encounter establishment. The definition of sexually oriented businesses shall not include an establishment where a medical practitioner, psychologist, psychiatrist, or similar professional person licensed by the state engages in medically approved and recognized sexual therapy.

AA. "Sexually oriented business employee" means anyone who works on the premises of a sexually oriented business in activities related to the sexually oriented aspects of the business, including, without limitation, all managers, dancers, escorts, models, and other similar employees whether or not hired as employees, agents or independent contractors. The term "sexually oriented business employee" does not include those whose work is unrelated to the sexually oriented aspects of the business, such as janitors, bookkeepers, cooks, bartenders, servers and similar employees unless such persons also are managers or supervisors of the business. All persons making outcall meetings under this chapter, including escorts, models, guards, escort service runners, drivers, chauffeurs and other similar employees shall be considered sexually oriented business employees.

BB. "Sexually oriented entertainment activity" means the sale, rental, or exhibition for any form of consideration, of books, films, video cassettes, magazines, periodicals, or live performances which are characterized by an emphasis on the exposure or display of specified sexual activity.

CC. "Specified anatomical areas" shall mean human genitals, anus, cleft of the buttocks, or the female breast.

DD. "Specified criminal activity" means any of the following offenses:

1. prostitution or promotion of prostitution; dissemination of obscenity or illegal pornography; sale, distribution or display of harmful material to a minor; sexual performance by a child; possession or distribution of child pornography; lewdness; sexual battery; rape; indecent exposure; indecency with a child; engaging in organized criminal activity relating to a sexually oriented business; sexual assault; molestation of a child; or distribution of a controlled substance; criminal attempt, conspiracy or solicitation to commit any of the foregoing offenses or

offenses involving the same elements from any jurisdiction regardless of the exact title of the offense; for which:

- (a) less than two years have elapsed since the date of conviction or the date of release from confinement imposed for the conviction, or the last date of probation or parole, whichever is the later date, if the conviction is of a misdemeanor offense;

- (b) less than five years have elapsed since the date of conviction or the date of release from confinement for the conviction, or the last date of probation or parole, whichever is the later date, if the conviction is of a felony offense; or

- (c) less than five years have elapsed since the date of the last conviction or the date of release from confinement for the last conviction, or the last date of probation or parole, whichever is the later date, if the convictions are of two or more misdemeanor offenses or combination of misdemeanor offenses occurring within any 24-month period.

2. The fact that a conviction is being appealed shall have no effect on the disqualification of the applicant.

EE. "Specified sexual activity" means actual or simulated acts of any of the following:

1. Sex acts, normal or perverted, including, but not limited to, human sexual intercourse, sexual copulation between a person or an animal, cunnilingus, bestiality, buggery, pederasty, sodomy, oral copulation, or masturbation; or

2. Excretory functions as a part of or in connection with any of the activities described above.

FF. "Transfer of ownership or control" of a sexually oriented business shall mean any of the following:

1. The sale, lease, or sublease of the business;

2. The transfer of securities which constitute a controlling interest in the

business, whether by sale, exchange, or similar means; or

3. The establishment of a trust, gift, or other similar legal device which transfers the ownership or control of the business, except for transfer by bequest or other operation of law upon the death of the person possessing the ownership or control.

GG. "Viewing room" means the room, booth, or area where a patron of sexually oriented business would ordinarily be positioned while watching a film, videocassette, or other video reproduction.

#### **5.82.040 License required.**

A. It shall be a Class B misdemeanor to operate a sexually oriented business in the city without a valid sexually oriented business license.

B. It shall be a Class B misdemeanor for any person to be an "employee" of a sexually oriented business, provide outcall services, or act as an escort service runner in the city without a valid sexually oriented business employee license.

C. An applicant or renewal applicant for a sexually oriented business license or a sexually oriented business employee license shall file in person at the office of the city a completed application made on a form provided by the city. The application shall be signed by the applicant and notarized.

D. An application or renewal shall be considered complete when it contains the following information:

1. The applicant's full true name and any other names used in the preceding five (5) years.

2. Current mailing address and street address of the applicant.

3. Written proof of age and birth date, in the form of a copy of a birth certificate or driver's license or other picture identification document issued by a governmental agency.

4. If the application or renewal is for a sexually oriented business license, the

business name, location, legal description, mailing address and phone number (if one currently exists) of the proposed sexually oriented business.

5. If the application or renewal is for a sexually oriented business license, the name and address of the statutory agent or other agent authorized to receive service of process.

6. A waiver consenting to a criminal background check.

7. A statement of whether the applicant has been convicted or has pled guilty or *nolo contendere* to a specified criminal activity and, if so, the specified criminal activity involved, the date, place, and jurisdiction of each. The statement shall also disclose whether the applicant has had a previous sexually oriented business or sexually oriented business employee license under this chapter or other sexually oriented business ordinances from another city or county denied, suspended, or revoked within the past two years, including the name and location of the sexually oriented business for which the permit was denied, suspended, or revoked, as well as the date of the denial, suspension, or revocation, and whether the applicant has been a partner in a partnership or an officer, director, or stockholder with a controlling interest in a corporation that is licensed under this ordinance whose license has previously been denied, suspended, or revoked, including the name and location of the sexually oriented business for which the permit was denied, suspended, or revoked as well as the date of the denial, suspension, or revocation.

The information provided pursuant to Paragraphs 1 through 7 of this subsection shall be supplemented in writing by certified mail, return receipt requested, to the city within ten (10) working days after a change of circumstances which would render such information false or incomplete.

E. An application or renewal for a sexually oriented business license shall be accompanied by a sketch or diagram showing

the configuration of the premises, including a statement of total floor space occupied by the business. The sketch or diagram need not be professionally prepared but shall be drawn to a designated scale or drawn with marked dimensions of the interior of the premises to an accuracy of plus or minus six inches. Applicants who are required to comply with section 5.82.170 of this chapter shall submit a diagram meeting the requirements of that section.

F. If a person who wishes to operate a sexually oriented business is an individual, he shall sign the application or renewal for a license as applicant. If a person who wishes to operate a sexually oriented business is other than an individual, each officer, director, general partner, manager or other person who will participate directly in decisions relating to management and control of the business shall sign the application or renewal for a license as applicant. Each applicant must be qualified under section 5.82.080 and each applicant shall be considered a licensee if a license is granted.

G. A license or permit required by this chapter is in addition to any other licenses or permits required by the city, county, state or federal to engage in the business or occupation.

H. Any person engaged in the operation of a sexually oriented business or in the employment of a sexually oriented business shall comply with all other applicable local, state and federal laws, orders and statutes including, but not limited to, zoning ordinances.

I. The information provided by an applicant in connection with an application or renewal for a license under this chapter shall be maintained by the city on a confidential basis, except that such information may be disclosed only to law enforcement agencies in connection with a law enforcement or public safety function, or as may be required by governing law or court order.

#### **5.82.050 Location and zoning restrictions.**

It is unlawful for any sexually oriented business to operate a sexually oriented business at any location within the city that is not zoned for sexually oriented businesses. Sexually oriented businesses shall be allowed to do business in areas zoned for such use pursuant to title 19 of this code.

#### **5.82.060 Additional restrictions.**

It is unlawful for any sexually oriented business to sell or permit the consumption of any alcoholic beverage or beer, or to be located within 660 feet of a business licensed for the consumption of alcohol or liquor.

#### **5.82.070 Premises location and name.**

A. It is unlawful for any sexually oriented business or sexually oriented business employee licensee to operate a business at any location other than the licensed premises.

B. It is unlawful for any sexually oriented business or sexually oriented business employee licensee to do business in the city under any name other than the business name specified on the license.

#### **5.82.080 Issuance of license.**

A. Within three (3) business days after the filing of a completed application for a sexually oriented business license, the city shall issue a temporary license to the applicant. The temporary license shall expire upon the final decision of the license official to deny or grant the sexually oriented business license. Within thirty (30) days after the initial filing date of the completed application, the license official shall issue a sexually oriented business license to the applicant or issue to the applicant a letter of intent to deny the application. The license official shall approve the issuance of a sexually oriented business license unless one or more of the following is found by a preponderance of evidence to be true:

1. An applicant is less than eighteen (18) years of age.

2. An applicant has failed to provide information as required by section 5.82.040 for issuance of a license or has falsely answered a question or request for information on the application form.

3. The fee required by section 5.82.090 has not been paid.

4. An applicant has been convicted of a specified criminal activity, or has been shown to have committed a violation of sections 5.82.100, 5.82.130(B), or 5.82.210 within the previous year.

5. In the case of a sexually oriented business license application, the premises are not in compliance with applicable building, fire and health ordinances or codes and the interior configuration requirements of this chapter.

B. Within three (3) business days after the filing of a completed application for a sexually oriented business employee license, the city shall issue a temporary sexually oriented business license to the applicant. The temporary sexually oriented business license shall expire upon the final decision of the license official to deny or grant the license. Within thirty (30) days after the initial filing date of the receipt of a completed application, the license official shall either issue a sexually oriented business license or issue a written notice of intent to deny a sexually oriented business license to the applicant. The license official shall approve the issuance of a sexually oriented business license unless one or more of the following is found by a preponderance of evidence to be true.

1. The applicant is less than eighteen (18) years of age.

2. The applicant has failed to provide information as required by section 5.82.040 for issuance of a license or has falsely answered a question or request for information on the application form.

3. The fee required by section 5.82.090 has not been paid.

4. The applicant has been convicted of a specified criminal activity, or has been shown to have committed a violation of sections 5.82.100, 5.82.130(B) or 5.82.210 within the previous year.

C. The license, if granted, shall state on its face the name of the person or persons to whom it is granted, the expiration date, and, if the license is for a sexually oriented business, the address of the sexually oriented business.

#### **5.82.085 License display.**

The sexually oriented business license shall be posted in a conspicuous place at or near the entrance to the sexually oriented business so that it may be easily read at any time. A sexually oriented business employee shall keep the employee's license on his or her person or on the premises where the licensee is then working or performing and shall produce such license for inspection upon request by a law enforcement officer or other city official performing functions connected with the enforcement of this chapter.

#### **5.82.090 Fees.**

The fee for engaging in, carrying on, or conducting a sexually oriented business or employee license shall be as specified in the consolidated fee schedule.

#### **5.82.100 Inspection.**



A. Sexually oriented business operators and sexually oriented business employees shall permit law enforcement officers or agents of the city who are performing functions connected with the enforcement of this chapter to inspect the portions of the sexually oriented business premises where patrons are permitted, for the purpose of ensuring compliance with this chapter, at any time the sexually oriented business is occupied by patrons or open for business. A licensee's knowing or intentional refusal to permit such an inspection shall constitute a violation of this chapter.

B. Inspections authorized by this section do not apply to areas of an adult motel which are currently being rented by a customer for use as a permanent or temporary habitation.

#### **5.82.110 Expiration of License.**

Each license shall remain valid for the term described in section 5.06.110 unless otherwise suspended or revoked. Such license may be renewed only by making application as provided in section 5.82.040 and paying the fee as provided in section 5.82.090.

#### **5.82.120 Suspension.**

The city shall issue a notice of intent to suspend a sexually oriented business license if it is determined that the sexually oriented business licensee has knowingly violated this chapter or has knowingly allowed an employee to violate this chapter. The city shall issue a notice of intent to suspend a sexually oriented employee license if it is determined that the employee has knowingly violated this chapter. Such suspension shall not exceed thirty (30) days.

#### **5.82.130 Revocation.**

A. The city shall issue a notice of intent to revoke a sexually oriented business license or a sexually oriented business employee license if a cause for suspension pursuant to section 5.82.100 occurs and the license has been

suspended within the preceding twelve (12) months.

B. The city shall issue a notice of intent to revoke a sexually oriented business license or, in the case of an employee, a sexually oriented business employee license, if the hearing officer determines by a preponderance of evidence that:

1. The licensee has knowingly given false or misleading information in the application or renewal for the license.

2. The sexually oriented business licensee has knowingly allowed possession, use, or sale of controlled substances on the premises, or in the case of an employee, the sexually oriented business employee licensee has knowingly engaged in the possession, use, or sale of controlled substances on the premises. It shall be a defense to a revocation proceeding under this subsection that such possession, use, or sale occurred pursuant to a valid medical prescription.

3. The sexually oriented business licensee has knowingly allowed prostitution on the premises or, in the case of an employee, the sexually oriented business employee licensee has engaged in prostitution on any licensed premises.

4. The sexually oriented business licensee knowingly operated the sexually oriented business during a period of time when the license was suspended or, in the case of an employee, the sexually oriented business employee licensee has been employed as a sexually oriented business employee at a time when the employee's license was suspended.

5. The sexually oriented business licensee committed an act in violation of 18 U.S.C. § 2257 in or on the premises, or in the case of an employee, the sexually oriented business employee licensee committed an act in violation of 18 U.S.C. § 2257 in or on the premises.

6. The sexually oriented business licensee has knowingly allowed any specified sexual activity to occur in or on the premises

or, in the case of an employee, the sexually oriented business employee licensee has engaged in any specified sexual activity in or on any licensed premises.

C. The fact that any relevant conviction is being appealed shall have no effect on the revocation of the license.

D. For the purposes of this chapter, if an act by any employee constitutes grounds for revocation of that employee's license and the hearing officer determines by a preponderance of evidence that an officer, director, or general partner, or an employee who managed, supervised, or controlled the operation of the business, knowingly allowed such act to occur on the premises, then the hearing officer may review the employee's license.

E. When, after the notice and hearing procedure described in section 5.82.140, the hearing officer revokes a license, the revocation shall continue for one (1) year and the licensee shall not be issued a sexually oriented business license or sexually oriented business employee license for a period of one (1) year from the date revocation becomes effective, provided that, if the conditions of section 5.82.140(B) have been satisfied, a provisional license will be granted pursuant to that section. If, subsequent to a revocation based solely on subsection (B)(1) of this section, the hearing officer finds that the basis for the revocation has been corrected or abated, the applicant shall be granted a license if at least ninety (90) days have elapsed since the date the revocation became effective. If the license was revoked under subsections (B)(2), (B)(3), (B)(4), (B)(5), or (B)(6) of this section, an applicant may not be granted another sexually oriented business license or sexually oriented business employee license until at least one (1) year has elapsed.

#### **5.82.140 Hearing--Denial, revocation, and suspension--Appeal.**

A. If the city determines that facts exist for denial, suspension, or revocation of a

license under this chapter, the city shall notify the applicant or licensee (respondent) in writing of the city's intent to deny, suspend or revoke such license, including the grounds therefore, by personal delivery, or by certified mail.

1. The notification shall be directed to the most current business address or other mailing address on file with the city for the respondent. Within twenty (20) days of receipt of such notice, the respondent may provide to the city a written response that shall include a statement of reasons why the respondent believes the license should not be denied, suspended, or revoked.

2. Within five (5) days of the receipt of respondent's written response, the city shall notify respondent in writing of the hearing date on respondent's denial, suspension, or revocation proceeding. At such hearing, the hearing officer shall conduct a hearing at which respondent shall have the opportunity present all of respondent's arguments and to be represented by counsel, present evidence and witnesses on his or her behalf, and cross-examine any of the city's witnesses. The hearing officer shall issue a written opinion within five (5) days after the hearing.

3. If a written response from respondent is not received by the city within the time stated in section (A)(1) above, or if after a hearing, the hearing officer concludes that grounds exist for denial, suspension, or revocation of the license, then such denial, suspension, or revocation shall become final five (5) days after the hearing officer sends, by certified mail, written notice to the respondent that the license has been denied, suspended, or revoked. Such notice shall include a statement advising the respondent of the right to appeal such decision to a court of competent jurisdiction. If the hearing officer finds that no grounds exist for denial, suspension, or revocation of the license, then within five (5) days after the hearing, the hearing officer shall immediately withdraw the intent to deny,

suspend, or revoke the license and shall notify the respondent in writing by certified mail of such action. If the hearing relates to a denial of a license, the hearing officer shall contemporaneously order that the license be issued.

B. An applicant or licensee (aggrieved party) whose application for a license has been denied or whose license has been suspended or revoked shall have the right to appeal such action to a court of competent jurisdiction.

C. Sexually oriented businesses or sexually oriented business employees operating or working under temporary licenses shall be subject to the provisions of this chapter.

#### **5.82.150 Transfer limitations.**

A licensee shall not transfer his license to another person or location, nor shall a licensee operate a sexually oriented business under the authority of a license at any place other than the address designated in the sexually oriented business license application.

#### **5.82.160 Hours of operation.**

It shall be unlawful for any sexually oriented business to allow such establishment to remain open for business, or to permit any employee to engage in the performance, solicit a performance, make a sale, solicit a sale, provide a service, or solicit a service, before 10:00 a.m. or after 11:00 p.m. of any particular day. It shall be unlawful for any employee of a sexually oriented business to engage in a performance, solicit a performance, make a sale, solicit a sale, provide a service, or solicit a service, before 10:00 a.m. or after 11:00 p.m. of any particular day.

#### **5.82.170 Regulations pertaining to exhibition of sexually explicit films or videos.**

A. A person who operates or causes to be operated a sexually oriented business, other

than an adult motel, which exhibits on the premises in a viewing room of less than one hundred fifty (150) square feet of floor space, films, video cassettes, or other video reproductions characterized by an emphasis on the display of specified sexual activities or specified anatomical areas shall comply with the following requirements.

1. Each application for a sexually oriented business license shall contain a diagram of the premises showing the location of all manager's stations, viewing rooms, overhead lighting fixtures, video cameras and monitors installed for monitoring purposes and restrooms, and shall designate all portions of the premises in which patrons will not be permitted. Restrooms shall not contain video reproduction equipment. The diagram shall also designate the place at which the license will be conspicuously posted, if granted. A professionally prepared diagram in the nature of an engineer's or architect's blueprint shall not be required; however, each diagram shall be oriented to the north or to some designated street or object and shall be drawn to a designated scale or with marked dimensions sufficient to show the various internal dimensions of all areas of the interior of the premises to an accuracy of plus or minus six inches. The license official may waive the foregoing diagram for renewal applications if the applicant adopts a diagram that was previously submitted and certifies that the configuration of the premises has not been altered since it was prepared.

2. The application shall be sworn to be true and correct by the applicant.

3. No alteration in the configuration or location of a manager's station or viewing room may be made without the prior approval of the license official.

4. It shall be the duty of the operator, and of any employees present on the premises, to ensure that no patron is permitted access to any area of the premises which has been designated as an area in which patrons will not

be permitted in the application filed pursuant to paragraph 1 of this subsection.

5. The interior premises shall be equipped with overhead lighting fixtures of sufficient intensity to illuminate every place to which patrons are permitted access at an illumination of not less than one (1.0) foot candle as measured at the floor level. It shall be the duty of the operator, and of any employees present on the premises, to ensure that the illumination described above is maintained at all times that the premises is occupied by patrons or open for business.

6. It shall be the duty of the operator, and of any employees present on the premises, to ensure that no specific sexual activity occurs in or on the licensed premises.

7. It shall be the duty of the operator, and of any employees present on the premises, to ensure that not more than one person is present in a viewing room at any time. No person shall enter a viewing room that is occupied by another person.

8. It shall be the duty of the operator, and of any employees present on the premises, to ensure that no openings of any kind exist between viewing rooms. No person shall make an attempt to make an opening of any kind between viewing rooms.

9. It shall be the duty of the operator, or of any employee who discovers two or more patrons in a viewing room or discovers any person making or attempting to make an opening of any kind between viewing rooms, to immediately escort such persons from the premises.

10. It shall be the duty of the operator, or of any employee, who discovers an opening of any kind between viewing rooms to immediately secure such rooms, and prevent entry into them by any patron until such time as the wall between the rooms has been repaired to remove the opening. Removal and repairing openings between viewing rooms shall be in a manner that is as structurally substantial as the original wall construction.

11. It shall be the duty of the operator, at least once each business day, to inspect the walls between viewing rooms for openings of any kind.

12. It shall be the duty of the operator to post conspicuous signs in well-lighted entry areas of the business stating all of the following:

(a) That no loitering is permitted in viewing rooms.

(b) That the occupancy of viewing rooms is limited to one person.

(c) That specific sexual activity on the premises is prohibited.

(d) That the making of openings between viewing rooms is prohibited.

(e) That violators will be required to leave the premises.

(f) That violations of Subparagraphs (b), (c) and (d) of this paragraph are unlawful.

13. It shall be the duty of the operator to ensure that floor coverings in viewing rooms are nonporous, easily cleanable surfaces, with no rugs or carpeting.

14. It shall be the duty of the operator to ensure that all wall surfaces and seating surfaces in viewing rooms are constructed of or permanently covered by nonporous easily cleanable material.

15. It shall be the duty of the operator to ensure that premises are clean and sanitary. Such duty shall be fulfilled if the operator complies with the following cleaning procedures:

(a) The operator shall maintain a regular cleaning schedule of at least two cleanings per day, documented by appropriate logs.

(b) The operator shall provide an employee to check all areas for garbage, trash, body fluids and excrement and to remove and clean all areas with a disinfectant. All solid waste generated by the business shall be collected from the premises for disposal at a lawful solid waste disposal facility at least once each week. Prior to collection solid waste shall be stored in a manner that prevents

access by animals or members of the public and which will not facilitate the creation of a health nuisance.

(c) Thorough cleaning of the entire interior of any room providing patron privacy shall be done using a disinfectant. Cleaning shall include floors, walls, doors, seating, monitors, video cameras, and windows and other surfaces.

16. The interior of the premises shall be configured in such a manner that there is an unobstructed view from a manager's station of every area of the premises in which patrons are permitted, including the interior of each viewing room but excluding restrooms, to which any patron is permitted access for any purpose. A manager's station shall not exceed forty (40) square feet of floor area. If the premises has two (2) or more manager's stations designated, then the interior of the premises shall be configured in such a manner that there is an unobstructed view of each area of the premises to which any patron is permitted access for any purpose from at least one of the manager's stations. The view required in this paragraph must be by direct line of sight from the manager's station. It is the duty of the operator to ensure that at least one employee is on duty and situated in each manager's station at all times that any patron is on the premises. It shall be the duty of the operator, and it shall also be the duty of any employees present on the premises, to ensure that the view area specified in this paragraph remains unobstructed by any doors, curtains, walls, merchandise, display racks or other materials or enclosures at all times that any patron is present on the premises.

B. It shall be unlawful for a person having a duty under this section to knowingly fail to fulfill that duty.

#### **5.82.180 Loitering and exterior lighting and monitoring requirements.**

A. It shall be the duty of the operator of a sexually oriented business to: (a) initiate and

enforce a no loitering policy within the external boundaries of the real property upon which the sexually oriented businesses are located; (b) post conspicuous signs stating that no loitering is permitted on such property; (c) designate one or more employees to monitor the activities of persons on such property by visually inspecting such property at least once every ninety (90) minutes or inspecting such property by use of video cameras and monitors; and (d) provide lighting of the exterior premises to provide for visual inspection or provide video monitoring to prohibit loitering. If used, video cameras and monitors shall operate continuously at all times that the premises is open for business. The monitors shall be installed within a manager's station.

B. It shall be unlawful for a person having a duty under this section to knowingly fail to fulfill that duty.

#### **5.82.190 Penalties and enforcement.**

In addition to suspension or revocation of a license, it is unlawful for any person to knowingly violate, disobey, omit, neglect, or refuse to comply with or resist the enforcement of any of the provisions of this chapter. Each day the violation is committed, or permitted to continue, shall constitute a separate offense.

#### **5.82.200 Application to existing businesses.**

The provisions of this chapter shall be applicable to all persons and businesses described herein whether the herein-described activities were established before or after the effective date of the ordinance codified in this chapter and regardless of whether such persons and businesses are currently licensed to do business in the city.

#### **5.82.210 Additional regulations concerning live public nudity.**

It is unlawful for a sexually oriented business licensee to knowingly violate the following regulations or to knowingly allow an employee or any other person to violate the following regulations.

A. It shall be a violation of this chapter for a patron, employee, or any other person to knowingly or intentionally, in a sexually oriented business, appear in a state of nudity, regardless of whether such public nude conduct is expressive in nature.

B. It shall be a violation of this chapter for a person to knowingly or intentionally in a sexually oriented business appear in a semi-nude condition unless the person is an employee who, while semi-nude, shall be at least six (6) feet from any patron or customer and on a stage at least two (2) feet from the floor.

C. It shall be a violation of this chapter for any employee, while semi-nude in a sexually oriented business, to knowingly or intentionally receive any pay, drink or gratuity directly from any patron or customer, or for any patron or customer to knowingly or intentionally pay or give any gratuity directly to any employee, while said employee is semi-nude in a sexually oriented business.

D. It shall be a violation of this chapter for any employee, while semi-nude, to knowingly or intentionally touch a customer or the clothing of a customer.

E. It is unlawful for any person, including any patron of any sexually oriented business, to touch in any manner any performer; to place any money or object on or within the costume or person of any performer; or to give or offer to give to any such performer any drinks, money or object while such performer is performing; except that money may be placed on the stage which shall not be picked up by the performer except by hand.

F. A sign in a form to be prescribed by the city and summarizing the provisions of paragraphs A, B, C, and D of this section shall be posted near the entrance of each sexually

oriented business in such a manner as to be clearly visible to patrons upon entry.

#### **5.82.220 Regulations and unlawful activities.**

It is unlawful for any sexually oriented business or sexually oriented business employee to:

A. Allow persons under the age of eighteen (18) years, or the age of twenty one (21) years if required by applicable liquor ordinance, on the licensed premises, except that in adult businesses which exclude minors from less than all of the business premises, minors shall not be permitted in excluded areas;

B. Allow, offer or agree to conduct any outcall business with persons under the age of eighteen (18) years;

C. Except for seminude dancing bars, to allow, offer or agree to allow any alcohol being stored, used or consumed on or in the licensed premises;

D. Allow the outside door to the premises to be locked while any customer is in the premises;

E. Allow, offer or agree to gambling on the licensed premises;

F. Allow, offer or agree to any sexually oriented business employee touching any patron or customer; except that outcall employees and customers may touch except that any touching of specified anatomical areas, whether clothed or unclothed, is prohibited;

G. Allow, offer or agree to illegal possession, use, sale or distribution of controlled substances on the licensed premises;

H. Allow sexually oriented business employees to possess, use, sell or distribute controlled substances, while engaged in the activities of the business;

I. Allow, offer or agree to commit prostitution, solicitation of prostitution, solicitation of a minor or committing activities

harmful to a minor to occur on the licensed premises or, in the event of an outcall employee or business, the outcall employee committing, offering or agreeing to commit prostitution, attempting to commit prostitution, soliciting prostitution, soliciting a minor, or committing activities harmful to a minor;

J. Allow, offer, commit or agree to any sex act as validly defined by city ordinances or state statute in the presence of any customer or patron;

K. Allow, offer or agree to any outcall employee appearing before any customer or patron in a state of nudity;

L. Allow, offer or agree to allow a patron or customer to masturbate in the presence of the sexually oriented business employee or on the premises of a sexually oriented business.

#### **5.82.230 Outcall services; Operational requirements.**

It is unlawful for any business or employee providing outcall services contracted for in the city to fail to comply with the following requirements:

A. All businesses licensed to provide outcall services pursuant to this chapter shall provide to each patron a written contract in receipt of pecuniary compensation for services. The contract shall clearly state the type of services to be performed, the length of time such services shall be performed, the total amount such services shall cost the patron, and any special terms or conditions relating to the services to be performed. The contract need not include the name of the patron. The business licensee shall keep and maintain a copy of each written contract entered into pursuant to this section for a period not less than one year from the date of provision of services there under. The contracts shall be numbered and entered into a register listing the contract number, date, names of all employees involved in the contract and pecuniary compensation paid.

B. All outcall businesses licensed pursuant to this chapter shall maintain an open office or telephone at which the licensee or licensee's designated agent may be personally contacted during all hours outcall employees are working. The address and phone number of the license location shall appear and be included in all patron contracts and published advertisements. For outcall businesses whose premises are licensed within the corporate limits of the city, private rooms or booths where the patrons may meet with the outcall employee shall not be provided at the open office or any other location by the service, nor shall patrons meet outcall employees at the business premises.

C. Outcall services shall not advertise in such a manner that would lead a reasonably prudent person to conclude that specified sexual activities would be performed by the outcall employee.

#### **5.82.240 Legitimate artistic modeling.**

A. The city does not intend to unreasonably or improperly prohibit legitimate modeling which may occur in a state of nudity for purposes protected by the First Amendment of the U.S. Constitution or analogous state protections. The city does intend to prohibit prostitution and related offenses occurring under the guise of nude modeling. Notwithstanding the provisions of subsection 5.82.220(K) of this chapter, a licensed outcall employee may appear in a state of nudity before a customer or patron, provided that a written contract for such appearance was entered into between the customer or patron and the employee and signed at least twenty four (24) hours before the nude appearance. All of the other applicable provisions of this chapter shall still apply to such nude appearance.

B. If a contract for nude modeling or appearance is signed more than forty eight (48) hours in advance of the modeling or appearance, the individual to appear nude

shall not be required to obtain a license pursuant to this chapter. During such unlicensed nude appearance, it is unlawful to:

1. Appear nude or seminude in the presence of persons under the age of eighteen (18);

2. Allow, offer or agree to any touching of the contracting party or other person by the individual appearing nude;

3. Allow, offer or agree to commit prostitution, solicitation of prostitution, solicitation of a minor, or committing activities harmful to a minor;

4. Allow, offer, commit or agree to any sex act as validly defined by city ordinances or state statute;

5. Allow, offer, agree or permit the contracting party or other person to masturbate in the presence of the individual contracted to appear nude;

6. Allow, offer or agree for the individual appearing nude to be within five feet (5') of any other person while performing or while nude or seminude.

#### **5.82.250 Severability.**

Each section and provision of this chapter are hereby declared to be independent divisions and subdivisions and, notwithstanding any other evidence of legislative intent, it is hereby declared to be the controlling legislative intent that if any provisions of said chapter, or the application thereof to any person or circumstance is held to be invalid, the remaining sections or provisions and the application of such sections and provisions to any person or circumstances other than those to which it is held invalid, shall not be affected thereby, and it is hereby declared that such sections and provisions would have been passed independently of such section or provision so known to be invalid.